

Exhibit “A”

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

KAREN LURIE,

Plaintiff,

V.

**GLOBE LIFE AND ACCIDENT
INSURANCE COMPANY,**

Defendant.

CASE NO. 1:06-cv-00034-MEF

DEFENDANT GLOBE LIFE AND ACCIDENT INSURANCE COMPANY’S
SUPPLEMENT TO ITS MOTION FOR SUMMARY JUDGMENT

Defendant **Globe Life and Accident Insurance Company** (hereinafter “Globe” or “Defendant”) respectfully supplements its summary judgment with excerpts from the depositions of Plaintiff’s attorney, William Matthews, and Plaintiff’s expert, John Allen, which may assist the Court in deciding summary judgment in light of the statements made in the pre-trial conference in this matter. Both of these deposition have been taken since Globe moved for summary judgment:

I. TESTIMONY OF THE PLAINTIFF'S ATTORNEY, WILLIAM MATTHEWS.

A. Matthews, Like The Plaintiff, Has No Records Or Other Evidence To Support The Contention That Plaintiff And Matthews Notified Globe Of The Insured's Death Prior To The Past Due Premium Check Arriving At Globe's Offices.

Mr. Matthews has absolutely no documentation to support his contentions that he notified Globe of the Insured's death prior to Globe receiving the Plaintiff's past due premium check. Specifically, Matthews has no phone records, recordings or memoranda memorializing the call. *Matthews Depo.* at 21:4-22:2.¹ Furthermore, Mathews does not remember or have any record of

¹ The deposition transcript of William Matthews is attached hereto as Exhibit "A."

the name of the Globe employee with whom he allegedly spoke. *Matthews Depo.* at 22:8-16. Rather, Matthews only remembers that he talked with a female. *Matthews Depo.* at 22:17-20.

B. The Substance Matthews' Alleged Conversations With A Globe Employee Prior To Globe Receiving The Past Due Premium Check.

Mr. Matthews testified that in his first phone conversation with a Globe, he talked with a Globe employee (who he could only identify as a female) who told him how to go about filing a claim and the documents that were needed to file a claim. *Matthews Depo.* at 23:3-15. Matthews testified that all he discussed on this first call was how to go about making a claim. *Matthews Depo.* at 26:21-27:2. According to Matthews, he did not have any conversations with the Globe employee concerning whether the policy was in force, whether it had been reinstated or the premium payment history. *Matthews Depo.* at 25:8-22.

Mathews further testified that he had a second call a couple days later with the same Globe employee because the Plaintiff was wondering if she was late on her premium payment. *Matthews Depo.* at 27:13-28:21. Matthews never had any discussions with the Globe employee as to whether the Plaintiff made her premium payment within the 31 day grace period or beyond the grace period. *Matthews Depo.* at 35:19-36:18. Furthermore, Matthews never discussed with the Globe employee how and under what circumstances the policy could be reinstated. *Matthews Depo.* at 39:1-5.

Matthews testimony concerning the substance of this call was inconsistent. For example, Matthews initially testified that the Globe employee told him that there was "no problem" as long as Globe received the check by a certain date. *Matthews Depo.* at 29:12-30:10. Later, Matthews testified that he told the Globe employee "It's my understanding, if you mail the check, if it gets lost in the mail or whatever, it's considered - - and you get like late, it's considered paid." *Matthews Depo.* at 34:4-11. Matthews further testified concerning the Globe

employee's response: "but the person I was talking to was not a lawyer, but they agreed with me, and they said they felt like that was. . ." *Matthews Depo.* at 34:9-11. Finally, when asked if it struck him as odd that a Globe employee would tell him that the policy was in force when they did not receive the premium prior to the Insured's death, Matthews revealed that the Globe employee had not represented to him that the policy was in force:

Well they said if it was in the mail it was, you know. I explained to them what happened. The lady mailed the check and then the guy gets killed like the next week.² And she says, "As long as you send in these documents, we will send it to whoever and **see if they approve it.**"

Matthews Depo. at 40:18-41:1 (emphasis added).

Because this testimony seemed to differ from his previous testimony, Globe's counsel gave Mr. Matthews another opportunity to clarify what he meant:

- Q. So, just so we're clear, because your testimony seems a little bit different just then than it did previously, did the Globe person that you talked to say, "Well, just send the stuff in and we'll send it off and see if they approve it," or did they say, "The policy is in force because, you know the premium was" - -
- A. Well, they always told me - - I had never heard that the policy wasn't in force, they weren't going to force the policy. **But they told me that they had to send it to somebody to look at all the stuff I sent them and all that to get final approval.** And I sent them everything. I mean it was a pile of stuff.

Matthews Depo. at 41:7-22 (emphasis added). Globe continues to maintain, and has set forth in its previous summary judgment briefs, that any statements that may have been made to Mr. Matthews in an alleged phone call are inconsequential and Globe is entitled to summary judgment regardless of the substance of any such conversation. Furthermore, even assuming the law would permit the Plaintiff to make an argument of an oral modification or waiver, her own lawyer's testimony clearly shows that the Globe employee did not attempt to waive or modify any of the policy terms. Rather, accepting Mr. Matthews' testimony as true, the Globe employee

² Actually, the Plaintiff testified that the check was picked up by the mail carrier the day before the Insured's death.

merely stated that Mr. Matthews should submit a claim to the appropriate Globe Department and they would make a decision on the claim.

C. Matthews' testimony confirms that no modifications were made in accordance with the terms of the policy.

Matthews testified in his deposition that he never received any written modification of the policy. *Matthews Depo.* at 66:5-9. Accordingly, Matthews' testimony confirms that no modifications were ever made in accordance with the express terms of the policy.

II. THE TESTIMONY OF PLAINTIFF'S PURPORTED EXPERT, JOHN ALLEN.

A. It Is Undisputed That At The Time Plaintiff Allegedly Mailed The Premium Payment, January 5, 2004, The Subject Policy Was Lapsed And Out Of Benefit.

At the pre-trial conference, Plaintiff's counsel stated that there was a dispute as to whether the subject policy was lapsed and out of benefit at the time Plaintiff placed premium payment in the mail; Plaintiff's counsel stated that the dispute arose from the expert's report.

However, Plaintiff's only purported expert, John Allen, testified that the subject policy had lapsed and was out of benefit at the beginning of 2004. *Allen Depo.* at 122-122.

B. Defendant Did Not Waive Inadequate Reinstatement By Investigating Merits Of Claim When Plaintiff's Expert Opines That Defendant Was Required To Investigate Merits Of The Claim Even If Policy Was Out Of Benefit.

Also at pre-trial conference, Plaintiff's counsel argued that Globe waived the right to deny that the policy was out of benefit when the loss occurred by accepting the premium and investigating the claim on its merits. However, Plaintiff expert testified that in his opinion, Globe was obligated to perform a full investigation of the claim on its merits even if it contended the policy was out of benefit at the time of loss. *Allen Depo.* at 118, 120, 127. His testimony was that the investigation of the claim on the merits was done reasonably (*Allen Depo.* at 119, 129) but that the order of the investigation was in error. *Allen Depo.* at 119, 128.

Therefore, Plaintiff's theory that Globe somehow waived the right to challenge whether the policy was in force at time of loss, fails due to Plaintiff's expert's testimony.

/s/Robert E. Poundstone IV

Philip H. Butler (BUT007)

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CERTIFICATE OF SERVICE

I hereby certify that on January 23rd, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: **None.**

/s/Robert E. Poundstone IV
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Exhibit “A”

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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF ALABAMA
3 SOUTHERN DIVISION
4

5 CASE NO. 1:06-CV-0034MEF

6 KAREN LURIE,

ORIGINAL

7
8 Plaintiff(s),

9 v.

10 GLOBE LIFE and ACCIDENT INSURANCE

11 COMPANY, et al.,

12 Defendant(s).
13

14 DEPOSITION TESTIMONY OF:

15 WILLIAM MATTHEWS
16

17 Commissioner:

18 Renny D. McNaughton

19 December 21, 2006

20 Ozark, Alabama
21
22
23

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1 S T I P U L A T I O N

2 IT IS STIPULATED AND AGREED by and
3 between the parties through their respective
4 counsel that the deposition of William
5 Matthews, may be taken before Renny D.
6 McNaughton, Court Reporter and Notary
7 Public, State at Large, at the offices of
8 William Matthews, Ozark, Alabama, on the
9 21st day of December, 2006, commencing at
10 approximately 10:00 a.m.

11 IT IS FURTHER STIPULATED AND AGREED
12 that the signature to and the reading of the
13 deposition by the witness is waived, the
14 deposition to have the same force and effect
15 as if full compliance had been had with all
16 laws and rules of Court relating to the
17 taking of depositions.

18 IT IS FURTHER STIPULATED AND AGREED
19 that it shall not be necessary for any
20 objections to be made by counsel to any
21 questions, except as to form or leading
22 question and that counsel for the parties
23 may make objections and assign grounds at

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1 the time of trial or at the time said
2 deposition is offered in evidence, or prior
3 thereto.

4 In accordance with Rule 5(d) of the
5 Alabama Rules of Civil Procedure, as
6 amended, effective May 15, 1988, I Renny D.
7 McNaughton, am hereby delivering to Robert
8 Poundstone the original transcript of the
9 oral testimony taken the 21st day of
10 December, 2006, along with exhibits.

11 Please be advised that this is the
12 same and not retained by the Court Reporter,
13 nor filed with the Court.

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I N D E X

EXAMINATION BY:	PAGE NO.
Mr. Poundstone	6

E X H I B I T S

Defendant's

No. 1...Notice of Deposition	9
No. 2...Subpoena of Records	9
No. 3...1/02/04 Letter	42
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No. 5...2/03/04 Letter	46
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1 I, Renny D. McNaughton, a Court
2 Reporter of Greenville, Alabama, and a
3 Notary Public for the State of Alabama at
4 Large, acting as Commissioner, certify that
5 on this date, pursuant to the Alabama Rules
6 of Civil Procedure, and the foregoing
7 stipulation of counsel, there came before me
8 at the offices of William Matthews, Ozark,
9 Alabama, commencing at approximately 10:00
10 a.m. on the 21st day of December, 2006,
11 William Matthews, witness in the above
12 cause, for oral examination, whereupon the
13 following proceedings were had:

14
15 WILLIAM MATTHEWS,
16 being first duly sworn, was examined and
17 testified as follows:

EXAMINATION

18
19 BY MR. POUNDSTONE

20 Q Would you please state your full
21 name, for the record?

22 A William Bush Matthews, Jr.

23 Q Do you go by Will?

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1 A Will, yeah.

2 Q And what is your profession?

3 A I'm an attorney and a judge,
4 also.

5 Q And is that -- tell me where
6 you're a judge?

7 A Midland City, Clayhatchee,
8 Newton, and Dothan.

9 Q Okay.

10 A I was here at Ozark 14 years
11 before I moved to Dothan.

12 Q Okay. What kind of judge are
13 you?

14 A Municipal judge, part-time stuff.

15 Q And I noticed that you've
16 withdrawn as representing Ms. Lurie in this
17 case, correct?

18 A Yeah.

19 Q Okay.

20 A Because I'm a witness.

21 Q Okay. And do you --

22 A It's unethical for me to be a
23 witness and be a party in this lawsuit.

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1 Q Right.

2 A Or be an attorney in this
3 lawsuit, I think.

4 Q And, I assume, by doing that, you
5 expect to testify at trial?

6 A Yes, sir. If I'm called as a
7 witness, yeah.

8 Q Now, obviously, this deposition
9 today is unusual because you are an attorney
10 and you did represent Ms. Lurie. And I
11 understand that there may be instances today
12 where you want to assert the attorney/client
13 privilege. And, certainly, I'm not going to
14 force you or try to make you divulge stuff
15 that is covered by the attorney/client
16 privilege. I will say, just so we get it on
17 record, our position will be at trial that
18 if you assert the attorney/client privilege
19 for something that is asked in this
20 deposition, if testimony is offered on that
21 subject at trial, we'll certainly object to
22 that being entered into evidence and we'll
23 probably file a Motion in Limine in the same

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1 regard. So, I just wanted to put that on
2 the record.

3 (Whereupon, Defendant's
4 Exhibit Numbers 1 and 2 were
5 marked and attached to the
6 deposition.)

7 BY MR. POUNDSTONE

8 Q I want to show you what I've
9 marked as Exhibits 1 and 2. Exhibit 1 is a
10 copy of the deposition notice for your
11 deposition today, and Exhibit 2 is a
12 subpoena for documents that we previously
13 served upon you. Have you received both of
14 those documents?

15 A Yes, sir.

16 Q Okay. And have you reviewed the
17 documents that were requested in each one?

18 A Yes.

19 Q Okay. And do you have any
20 documents responsive to those requests?

21 A Actually, I don't. The only --
22 the only thing in there, and I believe I
23 wrote you a letter and told you so, the only

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1 thing that I had after looking through my
2 phone records are two telephone calls.
3 Let's see, one call is on March the 10th,
4 2:15 p.m., to Oklahoma City, Oklahoma,
5 telephone number (405)270-1410 for 5.7
6 minutes. And the other one, the other one
7 was on February the 18th for 11.3 minutes,
8 (405)270-1410. That's the only actual
9 records that I have of phone calls.

10 Q Okay.

11 A Although, I know I probably made
12 15 calls to these people.

13 Q And we'll just do it when we take
14 a break, but if we can just make a copy of
15 that, and I'm going to stick an exhibit
16 sticker on it and just put it as an
17 attachment.

18 A I can give you these two phone
19 bills and they're in there.

20 Q Okay.

21 A Along with thousands of other
22 numbers.

23 MR. SANSPREE: And just for the

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1 record, I'm not his lawyer, so
2 whatever he says you can have, you
3 can have.

4 (Whereupon, Defendant's
5 Exhibit Numbers 11 and 12A were
6 marked and attached to the
7 deposition.)

8 BY MR. POUNDSTONE

9 Q Okay. Super. I'm going to mark
10 those. I'm going -- actually, I've got my
11 exhibits premarked. I'm going to mark those
12 as 11 and 12 A.

13 A You can just keep them as far as
14 I'm concerned.

15 Q Okay. And, again, 11 and 12A are
16 the phone records of which show calls made
17 to Oklahoma City, correct?

18 A Right. And I assume that's to
19 that company, Globe.

20 Q How long have you known Karen
21 Lurie?

22 A Probably 15 to 20 years, at
23 least.

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1 Q Okay. How did you come to know
2 Ms. Lurie?

3 A I represented her in a custody
4 case involving her daughter, who's now
5 probably 20 or 21 years old. So that would
6 have been about 10 or 15 years ago. She
7 had -- when she got divorced, her husband
8 got custody of the little girl. And I filed
9 a modification to get custody for her, which
10 I was successful over in Henry County. It
11 was a Henry County case. And they appealed
12 the case to the Court of Civil Appeals, and
13 I think they appealed it to the Supreme
14 Court and they lost. And then they came
15 back about a year or two later and filed
16 again and appealed it again and lost again.

17 So I've had extensive dealings with her
18 on that.

19 Q Okay.

20 A Had nothing to do, you know, with
21 this case.

22 Q Okay. Did that proceeding, I
23 take it that was a husband that she was

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1 married to prior to Mr. David Lurie?

2 A Right.

3 Q Is there any other matters, other
4 than the one we're here on today and the
5 custody proceeding, that you represented her
6 on?

7 A No. And I hadn't seen her until
8 Chris got killed.

9 Q And "Chris," I guess "Chris" and
10 David Lurie are the same person?

11 A I didn't know his name was David.
12 I always called him Chris.

13 Q I think the Complaint said David
14 Lurie but he goes by Chris?

15 A Yeah. I always knew him as
16 Chris. Now, I don't know if that's his real
17 name or a nickname or whatever, but that's
18 what I always called him.

19 Q And I assume that you, in
20 addition to the custody proceeding, you also
21 did work for Ms. Lurie in connection with
22 Chris Lurie's death, correct?

23 A Yeah. She called me when he got

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1 killed, and I referred her to a lawyer in
2 Dothan, Mark Andrews. And he and I handled
3 that case.

4 Q When say he and you handled that
5 case, what case do you refer to?

6 A It was the wrongful death case.

7 Q Okay. Against the driver?

8 A Against the driver of the car.
9 Actually, I think it was a van he was
10 driving.

11 Q Okay. And I believe the accident
12 report does show that.

13 A Yeah.

14 Q Other than the wrongful death
15 case, the custody matter, and the matter
16 with the insurance policy with Globe Life,
17 are there any other matters in connection --
18 well, any other matters that you've
19 represented Ms. Lurie on.

20 A Not that I can think of. I'm
21 sure she's called me about stuff over the
22 years, but...

23 Q Are there any other life

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1 insurance policies on Chris Lurie that you
2 did work on or helped Ms. Lurie on
3 concerning Chris's death?

4 A I think there were, and I think
5 those have been paid out.

6 Q When was the first time you
7 became aware of the Globe policy that's the
8 subject of this lawsuit?

9 A She came in probably a week or
10 two after he got killed, and she was, like,
11 trying to get all his affairs in order, that
12 type thing. So I would say it was probably
13 -- she would know better than me, but I mean
14 I would say it was a couple weeks -- within
15 a couple weeks after he died.

16 Q Okay. And he died on
17 January 6th, and I believe her testimony
18 indicated that she thought it was around
19 January 12th when she came to see you.

20 A Whatever she would say would
21 probably be accurate.

22 Q Okay.

23 A If I kept my old appointment

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1 books going back -- it's been several years.
2 If I kept my appointment books, I could tell
3 you exactly, but I don't think we keep them.

4 Q Did she contact you at any time
5 concerning that policy prior to the death of
6 Chris Lurie?

7 A No.

8 Q Okay. She didn't call you -- she
9 testified that she put it in the mail on
10 January 4th. She didn't --

11 A She didn't call me about it.

12 Q Okay. You didn't talk to her
13 about the actual check while she was paying
14 it?

15 A No. In fact, I hadn't talked to
16 her until Chris got killed in probably a
17 couple years.

18 Q Okay. So, if I understand your
19 testimony right, she came to see you after
20 his death to talk about a number of issues
21 involving the death and not, specifically,
22 the Globe policy, is that accurate?

23 A Firstly, it was the death case.

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1 And when I talked to her about the death
2 case, I asked her about any insurance
3 policies and that type thing, and I told her
4 I would help her with that, if she needed
5 help.

6 And I don't think she brought in the
7 policy that day, or the policies. It might
8 have been the next day or a couple days, but
9 I told her I needed death certificates to
10 send, you know, to file the claim. And if I
11 sent a letter to the company, y'all would
12 have that. I couldn't find it.

13 Q Yeah. I do have a letter that I
14 will show you in just a little bit.

15 A Okay.

16 Q What is the first time you
17 remember discussing the Globe policy with
18 Ms. Lurie?

19 A Well, it would have been when she
20 brought in the policies.

21 Q What, specifically, do you
22 remember discussing with her about the
23 policy?

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1 A Well, I think -- how many years
2 ago has this been, three?

3 Q 2004.

4 A 2004. She's -- I think she
5 brought in something saying "your policy was
6 going to lapse if you don't send the money
7 in," or something like that. And she told
8 me at that point that she mailed a check to
9 the company. And it was a fairly
10 insignificant amount of money, \$30 or \$40.
11 It wasn't much money.

12 And she said she mailed the check like
13 the day or two before he got killed. And
14 that was one of her questions, would she be
15 covered. And I felt like she would if the
16 check had been in the mail. That's what I
17 learned in law school: If you post
18 something, it's paid -- it's considered paid
19 if they don't receive it until after
20 something happens, it's still valid.

21 But I think at that point, she came
22 back later with a death certificate. And
23 you're going to show me the letter so I will

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1 know what I did next. I think that's the
2 first thing I did.

3 Q Okay. Are there any other
4 discussions that you remember having with
5 her concerning the Globe policy prior to the
6 time that you sent the letter in to Globe?

7 A No.

8 Q Okay. Do you remember what
9 documents you reviewed relating to the
10 policy prior to the initial letter that you
11 sent to Globe?

12 A I can't remember. I don't know
13 if I saw the policy or -- I think I did see
14 the policy. She had a policy, and I read
15 through it. And I don't even know what the
16 value of it was. I think it was a hundred
17 thousand dollars.

18 And I think what I did then, I called
19 the first day -- I remember like this: I
20 called out there and talked to somebody and
21 asked them what I needed to do to file a
22 claim -- help her file her claim. And she
23 told me a death certificate and some other

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1 stuff. They wanted accident reports. Why,
2 I don't know. But they wanted accident
3 reports from the state troopers, which that
4 was no problem, because the head of the
5 state troopers is a client of mine. So I
6 called him and he got me that, which
7 probably would have taken several weeks to
8 get.

9 And, usually, in a death case, it takes
10 them a while to, you know, do the
11 investigation. I think I've got that in
12 here somewhere. I think I've got a copy of
13 what they sent me in here. I've got a pile
14 of stuff. Let's see. See if I can find it;
15 I can give it to you. Let's see. I think
16 they sent me back -- no, this is something
17 Globe sent me.

18 But I sent them all this stuff, the
19 accident report, death certificate, you
20 know, that type thing.

21 Q Okay. And you said that you
22 believe you had this phone call the first
23 day that Ms. Lurie came to see you?

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1 A Yes, I think so, or either the
2 second day. I think she came back the next
3 day or the next day.

4 Q And just so we're clear on the
5 record, and I think it was alluded to in
6 your previous testimony, you don't have any
7 records that would show the phone call that
8 was made to Globe the first or second day
9 that she came to see you?

10 A No. I dialed the 800-number, and
11 it's not on this -- this is the number I
12 called, the two I testified to earlier, that
13 (450)270-1410. But she had a toll-free
14 number, and I don't know what it was.

15 Q Okay.

16 A And I don't know if I've got
17 another file somewhere floating around the
18 office. I don't think I do.

19 Q Did you make any recordings of
20 any phone calls with Globe?

21 A No.

22 Q Did you ever prepare a memo to
23 the file that summarized what took place in

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1 a phone call with Globe?

2 A No, there wasn't a file.

3 Q Okay.

4 A I was just trying to help her out
5 to get her insurance, you know, money. Mark
6 Andrews had the file. I, basically, sent
7 the case to him.

8 Q Do you recall who at Globe you
9 talked to?

10 A No.

11 Q And I'm talking about the initial
12 conversation.

13 A I have no idea.

14 Q Do you have any records that
15 would show who you spoke with?

16 A No.

17 Q Do you remember if it was a male
18 or female?

19 A Yeah, it was a female, I remember
20 that.

21 Q Do you recall what department she
22 worked in?

23 A I think I asked for whoever

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1 handles claims, or whoever. So I guess it
2 would be the claims department.

3 Q And, obviously, you said you
4 guess. You're not real certain who?

5 A It would have to be somebody in
6 the claims department, that's what I asked
7 for. They told me how to file a claim, what
8 she needed, you know, what documents they
9 needed, that type thing. I can remember
10 that it wasn't the first person I talked to.
11 They referred me to somebody else, whoever I
12 called.

13 Q Okay. Did you have any
14 substantive conversations with anybody else?

15 A Not at that time.

16 Q Okay. So you make the first
17 call, and was there any discussion at all
18 concerning whether or not the policy was
19 lapsed or had been reinstated in that call?

20 A No, not at that time. I assumed
21 everything was fine. The first I heard they
22 weren't going to pay was in May when they
23 sent me that letter. I think I've got it

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1 sitting here. May the 18th.

2 Q Did you have any conversations at
3 all during this time as to whether or not
4 the policy was in force?

5 A Did I have any concerns?

6 Q Did you have any conversations
7 with the person at Globe?

8 A No. They didn't say anything
9 about that.

10 Q All right. Let's just do it this
11 way: Tell me everything that you remember
12 being said during that phone call?

13 A Okay. Well, basically, they told
14 me what I needed to send in at that point.
15 And then I want to say it was a week or two
16 later I talked to them, after I sent the
17 stuff, and they said they were going to
18 process the claim and "send you a check."

19 You know, I told them, basically, I was
20 not her lawyer as far as trying to get any
21 money. They didn't have to put my name on
22 the check. They could just make it out to
23 her as the widow or the administrator or

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1 whatever she -- I don't know what she did.
2 Mark handled that. I didn't handle that.

3 Q Okay. Anything else that you
4 remember discussing on that first call? Did
5 you even identify who you were calling on
6 behalf of, what the policy number was?

7 A Oh, yeah. Yeah. Yeah.

8 Q Okay. But you didn't have any
9 conversations concerning whether or not the
10 policy was in force?

11 A Not that first call.

12 Q Okay. You didn't have any
13 conversations concerning whether or not it
14 had been reinstated?

15 A Not the first time. Maybe later.

16 Q And you didn't have any
17 conversations about premium history or
18 premium payments or anything like that?

19 A The first time?

20 Q Right.

21 A I might have the second day or
22 the, you know, the next day.

23 Q Okay.

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1 A Because she told me that she had
2 just mailed the check. So I think I did
3 not, but not the initial call. But I mean,
4 like, I think I called maybe that Wednesday
5 or something and that came up.

6 Q Okay.

7 A And, you know, I talked to
8 whoever I talked to up there. I said,
9 "Look, it's 30-something dollars, and she
10 mailed it last week, or the week before the
11 fellow got killed." And they said, "As long
12 as we get it by a certain time" -- you know,
13 but I always assumed if you mailed the
14 check, that's the date. But I think they
15 said if they got it by a certain time.

16 Later on, Ms. Lurie said, "Well, you
17 know the check went through," so we didn't
18 have any problem. I didn't think we had a
19 problem until I got this letter of May the
20 whatever.

21 Q Okay. So that first call, all
22 you discussed was how to make a claim?

23 A Yeah. And she came back in like

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1 a couple days later and we called them
2 again.

3 Q Okay.

4 A And I probably called them ten
5 times after that. Every time I called them,
6 it was just like she would call here and
7 say, "Have you heard anything," or whatever,
8 and I would call them.

9 Q Okay. Have we talked about
10 everything that you remember discussing
11 during that first call?

12 A I think so.

13 Q Okay. Now, you said there's a
14 second call a couple days later. What
15 prompted that second call?

16 A What prompted the second call?

17 Q Uh-huh.

18 A I can't remember.

19 Q Do you remember who you talked
20 with?

21 A No.

22 Q Do you remember if that was a
23 male or female?

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1 A It was a female, I feel sure.

2 Q Do you remember if it was the
3 same person that you talked to --

4 A I think at some point I talked to
5 a male later on the down the road in the
6 legal department, but it was a female, I
7 think.

8 Q Okay. Do you remember if it was
9 the same female that you talked to during
10 the first call?

11 A Yeah, it was the same person.

12 Q Okay. Tell me what you recall
13 that y'all talked about during that call?

14 A She felt like -- you know, she
15 was wondering, she might be late on the
16 payment or something. She said she had the
17 payment mailed, and they said that was no
18 problem, as long as they got it by a certain
19 date. And the thing was mailed before he
20 died. I don't know if they got it before
21 that date or not. I feel sure they did.

22 Q Okay.

23 A And I remember this, too. She

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1 said, basically, she had all her bills
2 sitting out Christmas and just, basically,
3 forgot to mail all the checks, or whatever.
4 And he was starting a new job. In fact, I
5 don't -- I think this might have been his
6 first day of work. I can't remember. He
7 was going to work on his motorcycle when he
8 got killed.

9 Q Okay. Is there anything else
10 that you remember discussing in that second
11 call?

12 A Other than they assured me no
13 problem, you know, the check's in the mail,
14 no problem. Basically, it's thirty
15 something dollars, they weren't really
16 worried about it. They said, "We'll pay the
17 claim, don't worry about it."

18 Q That's what she said, "We'll pay
19 it, don't worry about"?

20 A If they got the money. If the
21 thing was timely mailed, and, obviously, not
22 mailed after the man died.

23 Q Right. Did y'all talk about

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1 whether or not the policy was within the
2 grace period when the payment was made?

3 A Yeah. I think they even waived
4 the grace period because it wasn't but \$30.
5 I mean they just said, well, as long as she
6 mails the check and we get the check by, I
7 want to say she said by next week or
8 whatever, if the thing had been mailed, then
9 you've got no problem. I said okay. And
10 that's basically it.

11 You know, the other calls I made were
12 basically saying, you know, "My lady hadn't
13 got her money yet."

14 "Well, it's coming. We've approved
15 it."

16 They told me that. "We approved the
17 thing. It's already been approved. We're
18 going to get you a check." And it never
19 came, and then in May I got this letter, in
20 May.

21 Q Okay. Back to that second call,
22 is that the only call that you ever
23 discussed whether or not the policy was in

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1 force with anyone at Globe?

2 A There might have been one other
3 call. I can't remember. I mean it's been
4 two years ago.

5 Q Okay. Do you remember if that
6 other call was before or after you received
7 the letter indicating that they had denied
8 the claim?

9 A Oh, it was before. Oh, yeah.

10 Q Okay. So you may have had two
11 calls where you discussed whether or not the
12 policy was in force?

13 A Well, the two calls that I
14 called, I think those were to the legal
15 department, to make sure they had
16 everything. And they called me several
17 times, too, asking for stuff that I didn't
18 even feel was relevant. I mean they wanted
19 autopsy reports, they wanted police reports.
20 They wasn't -- I said, "Look, he's dead.
21 There's no -- you know, it's not a suicide.
22 It's not any, you know" -- I couldn't
23 understand why they wanted it all.

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1 And I got perturbed at them. They kept
2 calling wanting stuff. And I sent them more
3 than I probably should have even sent them.
4 And I don't know whether I got more
5 perturbed at them or perturbed because
6 Ms. Lurie would call me, you know, and,
7 "Tell me what's going?" I would say, "I
8 don't know what's going on. I mean, they
9 tell me they're going to send you a check.
10 They're going to send it to you. They're
11 not going to send it to me," you know.

12 Q Okay.

13 A So, that's basically it.

14 Q And what I'm trying to find out
15 is, you know, I need to know every time that
16 you talked to somebody at Globe about the
17 coverage issue, whether or not there was
18 coverage for his death. And I know you said
19 the second call y'all discussed it. You
20 said there may have been another call where
21 it was discussed?

22 A And they assured me that there
23 was coverage. Because, in fact, later on

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1 they said, "We've got her money and -- by
2 that time and it's covered and we've
3 approved it and the check is coming."

4 And I told my client that two or three
5 times: "The check is coming." And the only
6 time that I ever thought the check wasn't
7 coming is when they wrote me this letter,
8 this S.J. Whittaker, whoever that is.

9 Q Which is the May 18th, which I've
10 gotten and will make an exhibit later?

11 A Yeah.

12 Q Denial of claim letter?

13 A It says that the premium of \$33
14 was received on January the 16th, 2004. And
15 I don't know -- when I talked to them, I
16 want to say it might have been a day or two
17 before that, they said, "As long as we get
18 the check within the next couple of days,
19 she's covered."

20 Q Even if he's already dead?

21 A Yeah. As long as she did not pay
22 the premium after he died. That was what
23 they told me.

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1 Q And did y'all discuss whether or
2 not the premium was considered paid upon
3 mailing or report of receipt?

4 A Yes. And they told me -- and I
5 told them, I said, "It's my understanding,
6 if you mail the check, if it gets lost in
7 the mail or whatever, it's considered -- and
8 you get it like late, it's considered paid."
9 And -- but the person that I was talking to
10 was not a lawyer, but they agreed with me,
11 and they said they felt like that was --

12 Q Was that that second call?

13 A Yeah. And that was like -- let's
14 see, this says that they got the check on
15 January 16th. He died on --

16 Q The sixth.

17 A The sixth. I think he died on a
18 Monday, maybe a Tuesday, I can't remember.
19 Let me think. I think he died on a Monday,
20 or maybe he died on a Tuesday. Anyway, I
21 think she came the next Monday is when she
22 came, and I told her not to. She wanted to
23 come in like the day after the funeral or

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1 something, and I told her just wait until
2 Monday or whatever.

3 Q Did you have any discussions with
4 anyone at Globe concerning the difference in
5 paying a premium late but during the grace
6 period and paying a premium after the grace
7 period and during the lapse, did y'all have
8 any discussions in that regard?

9 A No.

10 Q Did you have --

11 A The only time I heard about this
12 is when I got this letter. Then it said,
13 "We're unable to accept this premium," and
14 they sent me a check for \$33. They had
15 already cashed the check. They sent me a
16 check for \$33.

17 Q Which was refunding the premium?

18 A Yeah.

19 Q Did you ever make anybody at
20 Globe aware that the check was mailed beyond
21 the 31-day grace period?

22 A The only thing I heard about that
23 was this.

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1 Q Okay. The only time you ever
2 heard about the payment being made beyond
3 the grace period was the 18th letter?

4 A Well, they told me if the payment
5 was made before he died, they would honor --
6 she would get her check. They said it was
7 late, it's \$33, they give them extra, you
8 know, time or whatever if they forget to
9 mail the check, they're not going to cancel
10 their policy. That's basically what they
11 told me.

12 Q Okay. But y'all didn't have any
13 discussions as to whether or not it was
14 late, within the grace period, or late,
15 beyond the grace period?

16 A No. I wasn't aware of that until
17 I got this letter and the check for \$33 they
18 sent to me.

19 Q Okay. Which is the May 18th
20 letter. I've got it marked. I will just
21 show it to you and we'll go on and put it in
22 the record.

23 A I'm sure that's the same one I'm

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1 looking at.

2 (Whereupon, Defendant's
3 Exhibit Number 8 was marked and
4 attached to the deposition.)

5 BY MR. POUNDSTONE

6 Q I believe what I'm handing you
7 marked as Defendant's Exhibit 8 is the
8 May 18th letter, along with the check
9 attached, is that correct?

10 A Yeah. With a little note that
11 says, "If we can help you in any other way,
12 please tell us."

13 Q Okay. Now, I know this has been
14 a while and your memory may not be rock
15 solid on this, but I do want to talk about
16 any additional conversations beyond that
17 second call where you discussed whether or
18 not the policy was in force. And I need to
19 know first, do you specifically remember if
20 that another conversation took place?

21 A Every conversation I ever had
22 with them was, after that, "We got the
23 premium, you've sent us all the documents."

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1 First, they asked me for more documents. I
2 sent them piles of stuff, you know. And
3 once I sent them, they said, "We've got
4 everything we need. We've approved your
5 claim, the check is coming. Tell your lady
6 that the check is coming." And I instructed
7 them to send it to her and not me.

8 Q Okay. How many of these type
9 phone calls do you recall taking place?

10 A Probably eight or ten, at least,
11 or maybe more.

12 Q Do you remember the names of
13 anyone you talked to?

14 A No.

15 Q Do you have any records that
16 would show the names of any of the people
17 that you talked to?

18 A No.

19 Q Did you record any of the calls
20 --

21 A I don't record any calls of
22 anybody that I -- you know, that I talk to.
23 I think it was against the law to do that.

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1 Q Did you ever discuss with anybody
2 at Globe how and under what circumstances a
3 policy could be reinstated?

4 A No. They never told me it was
5 cancelled until this.

6 Q Is there anything that you talked
7 about with the Globe representative in that
8 second phone call that we haven't talked
9 about today?

10 A Not that I can think of.

11 Q Okay. And is there anything in
12 any of the phone calls concerning payment of
13 the premium, reinstatement of the policy, or
14 whether or not the policy was in force that
15 we haven't talked about so far today?

16 A No.

17 Q Did you have any discussions with
18 Ms. Lurie as to when she may have put the
19 premium -- overdue premium check in the
20 mail?

21 A Yes.

22 Q Okay.

23 A I remember that.

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1 Q Tell me what discussions you had
2 in that record regard?

3 A She said she put the checks in
4 the mail, I want to say maybe Friday or
5 Saturday before he got killed, sometime over
6 the weekend maybe, but that she took them to
7 the post office and they were mailed. So it
8 wasn't like, you know, the day he got
9 killed. It was several days before he got
10 killed.

11 Q Did it strike you as a bit
12 unusual that a Globe employee would tell you
13 that the policy was in force when they
14 didn't receive the premium prior to
15 Mr. Lurie's death?

16 MR. SANSPREE: Object to the
17 form.

18 A Well, they said if it was in the
19 mail it was, you know. I explained to them
20 what happened. The lady mailed the check
21 and then the guy gets killed like the next
22 week. And she says, "As long as you send in
23 these documents, we will send it to whoever

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1 and see if they approve it."

2 The next thing I hear, they approved
3 it, until May the whatever, and then they
4 say they didn't approve it. So they told me
5 one thing and then came back two or three
6 months later and sent me this letter.

7 Q So, just so we're clear, because
8 your testimony seems a little bit different
9 just then than it did previously, did the
10 Globe person that you talked to say, "Well,
11 just send the stuff in and we'll send it off
12 and see if they approve it," or did they
13 say, "The policy is in force because, you
14 know, the premium was" --

15 A Well, they always told me -- I
16 had never heard that the policy wasn't in
17 force, they weren't going to force the
18 policy. But they told me they had to send
19 it to somebody to look at all the stuff I
20 sent them and all that to get final
21 approval. And I sent them everything. I
22 mean it was a pile of stuff.

23 Q Did you ever know that Ms. Lurie

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1 put the premium payment in the mail after
2 the grace period had already expired?

3 A I don't know when she did it. I
4 don't know when the grace period was.

5 (Whereupon, Defendant's
6 Exhibit Number was marked 3 and
7 attached to the deposition.)

8 BY MR. POUNDSTONE

9 Q Okay. You were never aware of
10 those facts. I'll show you what I marked as
11 Exhibit 3. Have you seen that document
12 before?

13 A I have. In fact, I don't know
14 how I saw it, but I have seen this.

15 Q Do you know if that's something
16 that Ms. Lurie brought to you around the
17 time she came to see you the first or second
18 time?

19 A It might have been, but I
20 remember that. I think that was confirmed
21 when I called out there, and they called me
22 and said they received the money, or
23 whatever. So it was -- somebody called me.

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1 Q Do you remember any discussions
2 you had with Ms. Lurie concerning this
3 letter?

4 A I'm sure I had several.

5 Q Do you remember the substance of
6 any of those conversations?

7 A No. I think this just -- this
8 just confirms that they wanted the money by
9 the 17th, and I told them the fellow had
10 died. But they said as long as it was sent
11 to them before he died, then they -- you
12 know, it was fine.

13 Q Let me ask you this, and hold
14 onto that for just a second.

15 A All right.

16 Q Do you recognize the handwriting
17 on that document?

18 A No, huh-uh. I assume Ms. Lurie
19 wrote that down probably. I don't know.
20 It's not mine.

21 Q Will you read the -- will you
22 read the first sentence of paragraph 3 for
23 me?

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1 A "If you had not a chance to do
2 so, please send in your payment along with
3 attached notice and the benefits of your
4 policy will be reinstated, provided the
5 insured is still in good health. We must
6 receive your payment by January 17th, 2004."

7 Q Would you agree with me that
8 Chris Lurie was not in good health when
9 Globe received the premium payment?

10 A He was deceased.

11 Q And that's not good health, is
12 it?

13 A No.

14 (Whereupon, Defendant's
15 Exhibit Number 4 was marked and
16 attached to the deposition.)

17 BY MR. POUNDSTONE

18 Q I'm going to show you what I
19 marked as Exhibit 4. Have you seen that
20 document before?

21 A That's my signature. I wrote it,
22 yeah.

23 Q Okay. And is that -- earlier we

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1 talked about the first written letter that
2 you sent to Globe concerning the claim. Is
3 that the letter that you were talking about?

4 A I'm sure -- I don't know if I
5 sent more than that letter or not, but that
6 is a letter I sent concerning some of the
7 stuff they wanted, accident report, death
8 certificate. And then they called back
9 wanting more things. I mean, that's, you
10 know --

11 Q Do you remember whether or not
12 this letter was sent after the first call
13 that you had with someone at Globe?

14 A Oh, yeah.

15 Q Do you remember whether or not it
16 was sent before or after the second call you
17 had with someone at Globe?

18 A It would be after. This letter
19 would be after.

20 Q Okay. And there's no mention of
21 the premium issue in this letter. Is there
22 any particular reason that you didn't
23 mention that?

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1 A It wasn't an issue. She paid the
2 premium.

3 Q Okay.

4 A And I knew at this point she had
5 paid the premium. They had gotten money.
6 In fact, somebody called me and said they
7 got it by whatever date.

8 (Whereupon, Defendant's
9 Exhibit Number 5 was marked and
10 attached to the deposition.)

11 BY MR. POUNDSTONE

12 Q I'm going to show you what I
13 marked as Exhibit 5. That letter is
14 addressed to Ms. Lurie, so you may or may
15 not have seen it. So let me ask you, have
16 you seen that letter before?

17 A Oh, yeah. Yeah. She brought
18 this in, and this is what I'm, you know,
19 talking about the other things she wanted,
20 statement by the beneficiary, attending
21 physician statement, which I didn't know why
22 in the world they wanted that. That was --
23 you know, a death certificate, I had already

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1 sent them that. A police report, I had
2 already sent them that. Obituary, I didn't
3 know why they wanted that. We sent it to
4 them. A newspaper article, we sent them
5 that.

6 And then this was a problem that I had:
7 Names and addresses of all the doctors who
8 had treated him in the past five years. And
9 this set me off. And I called them, and I
10 said this was ridiculous. And they said,
11 "Well, this is part of our policy, we've got
12 to have this."

13 I said, "The man got killed in the car
14 wreck."

15 "Well, he might have been diabetic; or
16 he might have had blood pressure problems;
17 or he might have had a heart attack and
18 caused this accident."

19 I mean, I got livid. And I can still
20 remember this. I said, "Look, the guy got
21 killed in a head-on collision where the
22 other driver came over into his side of the
23 road. He hit the guy head on with the

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1 motorcycle. He went through the windshield
2 of that van and killed the driver of the
3 other car. Both of them were killed."

4 But, you know, I just couldn't
5 understand this. And I remember seeing
6 this, and that set off about two or three
7 phone calls to them about that. So, yes, I
8 saw that.

9 Q And just to be clear, I mean, do
10 you -- I mean, you don't have any knowledge
11 of whether or not, you know, conducting such
12 types of investigations are standard or not
13 in the life insurance industry?

14 A I would say it's very unusual to
15 say the least when you've got a case that's
16 clearly -- you know, why in the world are
17 they looking at stuff like this? I mean,
18 that -- red flags went off in my head right
19 there that there was trouble with paying the
20 claim when they're wanting all this stuff.
21 I couldn't figure out -- I said something is
22 going on.

23 Q Okay. But you've never worked in

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1 the insurance industry, have you?

2 A No. I've defended insurance
3 companies for a long time though.

4 Q And when you received this
5 February 2004 letter, was it your
6 understanding, at that time, that Globe
7 needed additional information before it
8 could begin the investigation process?

9 A That's what they said, they had
10 to have all that before they would write a
11 check is what they told me. And I think at
12 that stage, I even talked to one of their
13 lawyers or somebody in the legal department.

14 (Whereupon, Defendant's
15 Exhibit Number 6 was marked and
16 attached to the deposition.)

17 BY MR. POUNDSTONE

18 Q Okay. And I'm going to show you
19 what I marked as Exhibit 6. There we go.
20 Okay. Have you seen that letter before?

21 A Well, I know I seen it. I mean I
22 can look at my letterhead and signature.

23 Q Okay. And that is your signature

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1 there?

2 A Yeah.

3 Q Tell me what that letter is?

4 A Evidently, I sent them a bunch of
5 stuff and that's what, you know --

6 Q Okay.

7 A The stuff in there that was
8 requested that I hadn't sent them.

9 Q Okay. And that was sent in
10 response to the February 3, letter that we
11 just looked at and marked as Exhibit 5?

12 A Yeah.

13 Q Okay. And this letter is dated
14 March 2nd, correct?

15 A And I don't know who L.S. Lawson
16 is, but that's whoever I talked to.

17 Q Okay. And this letter is dated
18 March 2nd, correct?

19 A Yeah.

20 (Whereupon, Defendant's
21 Exhibit Number 7 was marked and
22 attached to the deposition.)

23

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1 BY MR. POUNDSTONE

2 Q I'm going to show you what I
3 marked as Exhibit 7. Do you recall seeing
4 that letter before?

5 A It was sent to me. I saw it if
6 it was sent to me.

7 Q And it, obviously, is addressed
8 to you, correct?

9 A Right. I'm sure I got it.

10 Q Okay.

11 A That's my address.

12 Q And this letter is dated
13 April 26th, 2004, correct?

14 A Uh-huh.

15 Q Is that your recollection as to
16 the approximate time period when Globe had
17 received all the information that it needed
18 to begin its investigation?

19 A That would have been a lot longer
20 after I sent it to them if I sent it to them
21 on March the 2nd. That's like six weeks
22 later.

23 Q Let me ask you this: Do you

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1 recall whether or not there was additional
2 information that Globe had to obtain a third
3 party to get because it was not provided by
4 either you or Ms. Lurie?

5 A I sent them everything they asked
6 me to send them, I think.

7 Q Let's go back briefly to the
8 May 18th letter. What did you do after you
9 received this letter?

10 A I don't think you want to hear
11 what I did, because it wasn't nice. I hit
12 the damn roof when I saw that letter. I was
13 incensed, and I'm still incensed. And I
14 picked up the telephone, and I'm sure -- I
15 hadn't looked at the date. Let me go back
16 to those phone records, see what these dates
17 were. I think these were before -- that's
18 March the 10th. I'm gone have to look at my
19 phone records. I don't know if I called the
20 toll-free number or not, but I remember
21 calling them.

22 Q Okay.

23 A And I told them there would be a

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1 lawsuit coming; I didn't handle that type
2 lawsuit but I would have somebody that did.

3 Q Okay. Do you remember -- let me
4 ask you this: Did you have just one
5 conversation with Globe after you received
6 the May 18th letter?

7 A I think I probably had two or
8 three. In fact, I think one of their
9 lawyers called me.

10 Q Do you remember what lawyer
11 called you?

12 A No. It was one of their
13 corporate people.

14 Q Do you remember if it was a male
15 or female?

16 A I'm sure it was a male.

17 Q Okay. And how about the other
18 folks you talked to, do you remember who
19 they were?

20 A I can't remember.

21 Q Okay.

22 A I can remember getting that
23 letter though, I can remember that.

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1 Q Do you remember anything specific
2 that was discussed in relation to the
3 policy, itself, and the coverage issue
4 during any of those calls?

5 A Yeah. I told them that I had
6 been assured the money was coming, I had
7 been assured that the claim was fine, they
8 just needed this information. And, you
9 know, a lot of this stuff, I didn't
10 understand why they needed it but I provided
11 it. I spent a lot of time getting this
12 information. I wasn't getting paid to do
13 that. You know, I did it as favor to her.
14 The whole, you know -- and I just -- it just
15 -- I was incensed when I got this letter.
16 This is what really incensed me. I don't
17 have a copy of the check, but they put
18 something on there, you know, "If you need
19 anything, we will be glad to help you," or
20 some little --

21 Q And that's page 2 of the
22 exhibit --

23 A Yeah.

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1 Q Which is Lurie --

2 A "If we can help you any other
3 way, please tell us." Yeah.

4 Q Did any of the Globe
5 representatives that you talked to explain
6 why they made the decision to deny the
7 claim?

8 A They said it was a corporate
9 decision not to allow it, because they say
10 that the policy had lapsed over a \$15
11 premium or something. And I explained to
12 them that the money had been mailed and
13 that -- before he died, the money had been
14 mailed, they got it before the lapse. I
15 think it was the day before or a couple days
16 before, but they got their money and they
17 cashed the check.

18 And I said, "You cashed the check,
19 because I have a copy of the cashed check."
20 And they said, "Well, we've sent you a
21 refund for that check."

22 I said, "That's real good. I'm going
23 to refer her to an attorney that will file

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1 suit for bad faith against your insurance
2 company. I don't handle that type case.
3 I've represented insurance companies. I've
4 been practicing law for 25 years, and I've
5 basically been a defense lawyer most of my
6 time. And, you know, that's where it's
7 going."

8 And they said, "Well, you go get you
9 somebody real smart."

10 I said, "That's fine."

11 Q Now, when you said that they
12 received a check before it had lapsed --

13 A Before that date on there.

14 Q Before the date on the --

15 A That January 17th date. They got
16 the money and put it in the bank before
17 then.

18 Q What you're saying, that they got
19 it before the date on January 17th?

20 A Right.

21 Q That's listed on Exhibit 3,
22 correct?

23 A That's right. That's right.

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1 Q But you recognize that the policy
2 was already lapsed before they received the
3 premium, because the grace period expired?

4 A Well, according to this, I mean
5 it tells me, "The benefits of your policy
6 will be reinstated provided the insured is
7 still in good health. We must receive your
8 payment by January 17th." They got their
9 payment. It was mailed before he died. It
10 wasn't mailed after he died. They got the
11 check after he died, but it was mailed
12 before he died.

13 Q Okay. But wouldn't you recognize
14 that the term reinstatement means that the
15 policy was lapsed, that there no longer was
16 coverage?

17 A Well, they're telling him he's
18 got coverage. If he had been alive he'd had
19 coverage.

20 Q Well, you don't read that as
21 offer to reinstate the policy, as opposed to
22 an opportunity --

23 A It's like a late fee or

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1 something. I mean, they're talking about
2 \$15 or \$20. I mean, you know, get
3 realistic. If this was a thousand dollar
4 premium or something, I can see it being a
5 big deal.

6 (Whereupon, Defendant's
7 Exhibit Number 9 was marked and
8 attached to the deposition.)

9 BY MR. POUNDSTONE

10 Q I'm going to show you what I
11 marked as Exhibit 9, and I will give you the
12 opportunity to look over that. Just let me
13 know when you're ready.

14 A Go ahead.

15 Q Okay. Have you seen that
16 document before?

17 A I'm sure I have.

18 Q Okay.

19 A I don't know. I don't know if
20 I've seen this one or not.

21 Q And I will represent to you that
22 is the Globe policy that Ms. Lurie has
23 produced in this lawsuit. Do you recall if

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1 you ever saw that policy?

2 A Yeah, I probably did.

3 Q Okay. And, actually, if you look
4 at the top of the document, it appears to
5 have a faxed tag line that shows that it was
6 either faxed to or from your office at some
7 point. And I don't believe the date is
8 clear enough to be able to read. Is that
9 correct?

10 A Yeah. Right. I must have faxed
11 this -- I don't know if I faxed it to -- I
12 faxed it 10/02. I can't see when it was.

13 Q Could be either January 21st or
14 June 21st.

15 A I don't know.

16 Q Okay. Do you recall whether or
17 not you reviewed the policy before you had
18 those first and second phone conversations
19 with someone at Globe?

20 A I can't remember.

21 Q Do you recognize whose
22 handwriting that is on this policy?

23 A No. It's not mine. I'm sure I

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1 had a copy of this when I mailed them the
2 initial stuff, the death certificate and all
3 that. It's got a thing in here where you've
4 got to send them a notice of death, or
5 whatever, and I sent that letter on
6 January 26th.

7 Q Would you turn to the page of
8 that document that is Bates stamped Lurie
9 0013.

10 A I'm looking at it.

11 Q Okay. Do you see the bottom,
12 last paragraph on that page, where it says,
13 "Termination of coverage"?

14 A Yeah.

15 Q Would you read that for me?

16 A "Coverage of any insurance will
17 terminate at the end of grace period
18 following and premium due date for which
19 insured's fee for required premium is not
20 paid. A premium paid for any period after
21 the date coverage terminates will
22 constitute -- continue the insurer's
23 coverage in force and will be returned

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1 unless accepted by us under the
2 reinstatement provision of the certificate."

3 Q Now, sitting here today reading
4 that provision, would you acknowledge that
5 pursuant to the policy, any premiums
6 received after the grace period would only
7 continue the policy if the reinstatement
8 provisions were met?

9 A There's several ways to get it
10 back in force if they say it wasn't in
11 force.

12 Q But you recognize that that
13 policy language requires in order to keep
14 the policy from terminating, that the
15 reinstatement provisions in the policy be
16 met?

17 A You have to pay up what you owe I
18 guess is what they're saying.

19 Q Turn to the next page.

20 A Which one?

21 Q Lurie 0014.

22 A Okay.

23 Q And do see there's definition,

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1 the fourth paragraph down from the top, of
2 grace period?

3 A Yeah.

4 Q Read that definition for me.

5 A "Grace period. A grace period of
6 31 days will be allowed each insured for the
7 payment of each premium after the first
8 during which period his or her insurance
9 shall continue in force."

10 Q Okay. Now, do you recognize or
11 you would agree that pursuant to that
12 language, the grace period on the policy
13 extends for a period of 31 days past the
14 date that the premium is due, correct?

15 A That's right.

16 Q Okay. And you don't dispute in
17 this case that the grace period had lapsed
18 before Globe received the premium on
19 January 16th, do you?

20 A No, it hadn't.

21 Q Okay. And you don't dispute the
22 fact the grace period had run before
23 Mr. Lurie's death on January 6th, do you?

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1 A It had.

2 Q And it also run before Ms. Lurie
3 said she placed a check in the mail on
4 January 4th, correct?

5 A That's right. It had about a
6 week, I think.

7 Q Now, if you drop down to the next
8 line and read the provisions for
9 reinstatement, the next paragraph.

10 A "Coverage may be reinstated
11 anytime within one year after default in
12 premium payment if the insured provides
13 evidence of insurability satisfactory to us
14 and all overdue premiums are paid."

15 Q Okay. Now, pursuant to that
16 language, you would agree that in order to
17 reinstate the policy, two things were
18 required, correct, one of those?

19 A That's what this says, yes.

20 Q One of those being evidence of
21 insurability satisfactory to Globe?

22 A Yes.

23 Q And, two, that all overdue

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1 premiums are paid, correct?

2 A Yeah.

3 Q Now, if you go to the first
4 paragraph under that same page --

5 A Is that 14?

6 Q Yes, Lurie 14.

7 A All right.

8 Q And read the provisions for
9 payments. It's the first paragraph.

10 A "Each premium a payable in
11 advance at our administrative office."

12 Q Okay. Now, sitting here, you
13 acknowledge that pursuant to the policy,
14 payments are made at Globe's administrative
15 office, correct?

16 A I assume so.

17 Q And it doesn't say payments are
18 made when they're put in the mail, does it?

19 A No.

20 Q If you will, go back to Lurie
21 0013.

22 A Okay.

23 Q And drop down to the definition

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1 for evidence of insurability, and it's one,
2 two, three, four, five, six, seven, the
3 seventh definition down from the top.

4 A Okay. "Satisfaction proof is
5 determined by us that a person is acceptable
6 for insurance."

7 Q Okay. Now, surely you'd
8 acknowledge that a deceased man is not
9 acceptable for life insurance, wouldn't you?

10 A That's a stupid question. Of
11 course not.

12 Q If you would, for me, just one
13 more provision of the policy I want you to
14 take a look at. If you would, go to Lurie
15 0014.

16 A Okay.

17 Q Under the general provisions, and
18 if you drop down, the seventh paragraph,
19 Entire Contract Changes, will you read that
20 provision for me?

21 A "The certificate with group
22 policy enrollment and attached papers, if
23 any, is the entire contract between you and

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1 us, no changes in this certificate will be
2 effective until approved by us. This
3 approval must be noted or attached to the
4 certificate."

5 Q In the entire you were handling
6 this matter for Ms. Lurie, you never
7 received any written modification of this
8 insurance policy, did you?

9 A All of it was oral.

10 Q So --

11 A The only thing written I received
12 was this letter from them.

13 Q So your contentions, at least in
14 this case, is that Globe somehow orally
15 modified the terms of this policy, is that
16 correct?

17 A I'm not making any contentions.

18 MR. SANSPREE: He's just a
19 witness.

20 A I'm just a witness, and I'm
21 telling what happened. That's up for a
22 judge to determine whether or not this
23 contract is enforceable or not.

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1 (Whereupon, Defendant's
2 Exhibit Number 10 was marked and
3 attached to the deposition.)

4 BY MR. POUNDSTONE

5 Q Okay. I'll show you what I'm
6 going to mark as Exhibit 10 --

7 A Okay.

8 Q -- and ask if you've seen that
9 document before?

10 A Yeah.

11 Q Okay. Is that -- well, tell me
12 what that document is.

13 A That's an affidavit I executed on
14 November the 2nd of this year.

15 Q Okay. Is that your
16 understanding, that this was executed in
17 connection with Ms. Lurie's brief and
18 opposition to our summary judgment motion?

19 A Actually, I don't know why --
20 what the purpose of it was.

21 Q It is your affidavit?

22 A But it's my affidavit and
23 everything in it is true.

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1 Q Okay. That was my question.
2 Everything in that affidavit is accurate,
3 correct?

4 A Yeah.

5 Q Okay. Is there anything in that
6 affidavit that you think needs further
7 explaining?

8 A It says it pretty good. The only
9 thing that's not in the affidavit concerning
10 this is the extra things they asked me to
11 provide you --

12 Q Which we talked about. The
13 additional information --

14 A Yeah, we talked about that.

15 Q -- requested in that February
16 letter?

17 A Doctors' statements, medical
18 records, medical history, that type thing.

19 Q Okay. There's two exhibits
20 referenced in that affidavit that were not
21 attached when the brief was filed, and just
22 so -- and I think we've already got them --

23 A They're in.

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1 Q -- into evidence here. Okay.
2 let's just reference the Exhibit Numbers
3 just so that we get that on the record. The
4 January 26th letter that is referenced in
5 your affidavit as Exhibit A?

6 A Right, I've seen it.

7 Q Is what we marked as Exhibit 4,
8 the letter that's referenced in that
9 affidavit?

10 A Right. I assume that's the same
11 letter.

12 Q And I'm showing you what we
13 earlier marked as Exhibit 8.

14 A Right.

15 Q Is that the letter that is
16 referenced in your affidavit and indicated
17 that it will be attached as Exhibit B?

18 A Right.

19 Q Okay. I see that you've got some
20 files here with you today.

21 A Yeah.

22 Q Do you mind if I glance through
23 there to see if there's any documents that I

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1 don't have.

2 A Be my guest.

3 Q Okay.

4 A You know, that's -- I don't know
5 if there's -- most of this stuff is
6 connected with this lawsuit. I've just been
7 throwing it in a file.

8 MR. POUNDSTONE: Chris, do you
9 want to look through it first to
10 see if anything --

11 MR. SANSPREE: I know we gave you
12 a letter one time.

13 MR. POUNDSTONE: Why don't we go
14 off the record and let Chris look
15 at it.

16 (Off-the-record.)

17 (Whereupon, Defendant's
18 Exhibit Number 12B was marked and
19 attached to the deposition.)

20 BY MR. POUNDSTONE

21 Q Show you what I'm going to mark
22 as Exhibit 12B, which is a letter from you
23 to me. And just to put it in the record,

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1 that is the letter that you sent me in
2 response to the subpoena that we issued,
3 correct?

4 A Yeah.

5 Q Okay.

6 A Yeah. Yeah.

7 Q That is -- well, do you want --
8 is that something -- let me ask you, I may
9 mark it, I may not. Is that something that
10 you've done since this lawsuit was filed or
11 is that something that you made back in
12 January of 2004?

13 A No, this is recent.

14 Q Okay.

15 A I just wrote down just to remind
16 myself.

17 Q Okay. I don't have any other
18 questions.

19 MR. SANSPREE: I don't have
20 anything.
21
22
23

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C E R T I F I C A T E

STATE OF ALABAMA:

JEFFERSON COUNTY:

I hereby certify that the above and foregoing deposition was taken down by me in stenotype, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing.

I further certify that I am neither of counsel nor kin to the parties to the action, nor am I in any way interested in the result of said cause.

Renny McNaughton

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